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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,299	02/13/2004	Andrew Kadatch	MS305998.1/MSFTP547US	7435
27195 7590 12/27/2006 AMIN. TUROCY & CALVIN, LLP 24TH FLOOR, NATIONAL CITY CENTER 1900 EAST NINTH STREET CLEVELAND, OH 44114			EXAMINER TRAN, VINCENT HUY	
			ART UNIT 2115	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/27/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/779,299	Applicant(s) KADATCH ET AL.	
	Examiner Vincent T. Tran	Art Unit 2115	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-21,23-26 and 28-32 is/are rejected.
- 7) ☒ Claim(s) 2,7,22 and 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/4/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is responsive to the communication filed on 2/13/04
2. Claims 1-32 are pending for examination.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on 6/4/04 were considered by the examiner.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1, 3-5, 6, 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Bishop et al. U.S. Patent No. 5,872,913 ("Bishop").

6. As per claim 1, Bishop discloses a performance monitoring system, comprising:

a performance component [140 fig. 9] that initiates at least one low priority thread involving at least one computing resource [CPU]; and

a monitoring component [162 fig. 9] that obtains at least one performance parameter for computing resource derived, at least in part, from the low priority thread initiated by the performance component [col. 10 lines 51-61].

7. As per claim 3, Bishop discloses the computing resource comprising at least one selected from a group consisting of a CPU and a memory resource [col. 10 lines 51-51].
8. As per claim 4, Bishop discloses the performance parameter comprising at least one from the group consisting of available CPU processing time, available memory, and available CPUs [col. 10 lines 55-56].
9. As per claim 5, Bishop discloses a dynamically linked library comprising the system of claim 1 [SYSTRACE – col. 11 lines 1-14].
10. Claims 11, 13-16, 18, 19-20, 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Berc et al. U.S. Patent No. 5,796,939 (“Berc”).
11. As per claim 11, Berc discloses a performance monitoring system, comprising:
 - a performance component [231-233 fig. 2] that initiates at least one high frequency interrupt involving at least one computing resources [col. 4 lines 44-47; col. 1 lines 50-56]; and
 - a monitoring component [230 fig. 2] that obtains at least one performance parameter for the computing resource derived, at least in part, from the high frequency interrupt initiated by the performance component [col. 2 lines 2-7; claim 1]¹.

¹ In summary, Berc teaches the means to initiate a high frequency sampling to obtain at least one performance parameter that generated by the processor.

12. As per claim 13, Berc discloses the computing resource comprising at least one selected from the group consisting of a CPU and a memory resource [claim 1].

13. As per claim 14, Berc discloses the performance parameter comprising at least one from the group consisting of available CPU processing time, available memory, and available CPUs [inherent – lines 17-24].

14. As per claim 15, Berc discloses a dynamically linked library [a kernel mode components].

15. As per claim 18, Berc discloses the entity employing the method of claim 16 comprising a computer [fig. 1].

16. As per claim 19, Berc discloses a method, therefore, Berc discloses a computer readable medium to perform the method.

17. As per claim 20, see claim 18.

18. As per claim 32, Berc teaches a data packet transmitted between two or more computer components [*Kernel mode component 230 and a set of performance counter 201-Fig. 2*] that facilitates computing performance, the data packet comprising, at least in part, information relating to a computing performance system that utilizes, at least in part, at least one selected

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from the group consisting of at least one low-priority thread with memory and computationally-intensive operations and at least one high frequency interrupt to determined availability of computing resources [abst].

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

21. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

22. Claims 12, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berc as applied to claim 11 or 16 above.

23. As per claim 12, Berc does not explicitly teach the high frequency interrupt comprising an interrupt with a frequency of at least approximately 300 Hertz. However, Berc particularly teaches the interrupting rate can be fixed or variable and that the rate can be very high.

Therefore, it is obvious to one of ordinary skill in the art that the interrupt rate teach by Berc comprises the frequency of 300 Hertz.

24. Claims 21, 23-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berc in view of Bishop.

25. As per claim 21, Berc discloses a performance monitoring system, comprising:
a performance component that initiates at least one high frequency interrupt involving at least one computing resource; and

a monitoring component that obtains at least one performance parameter for computing resource derived, at least in part, from at least from the high frequency interrupt initiated by the performance component [see discussion in claim 11].

Berc does not teach initiates at least one low priority thread.

Bishop teaches another method directed to the monitoring and capturing of data processing system's resource utilization. Specifically, Bishop teaches a performance component that initiates at least one low priority thread to obtains at least one performance parameter for computing resource [see discussion in claim 1].

At time of the invention was made, it would have been obvious to one of ordinary skill in the art the have modified the system of Berc with the initiates of a low priority thread of Bishop in order to accurate measure the availability of the CPU during idle time.

26. As per claim 23, see claim 12.

27. As per claim 24, see claim 13.

- 28. As per claim 25, see claim 14.
- 29. As per claim 28, see claim 18.
- 30. As per claim 29, see claim 19.
- 31. As per claim 30, see claim 30.

Allowable Subject Matter

32. Claims 2, 7, 22, 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vincent T. Tran whose telephone number is (571) 272-7210. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas c. Lee can be reached on (571) 272-3667. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Vincent Tran



CHUN CAO
PRIMARY EXAMINER